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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

STEPHEN P. SHOEMAKER, JR., Plaintiff and Appellant, v. MARC A. BRONSTEIN, Defendant and Respondent.	B208050 (Los Angeles County Super. Ct. No. BC366291)

APPEAL from a judgment of the Superior Court of Los Angeles County. Elihu M. Berle, Judge. Affirmed.

Law Offices of T. Stanford Erickson and T. Stanford Erickson for Plaintiff and Appellant.

Nemecek & Cole, Jonathan B. Cole, Michael W. Feenberg and Susan S. Baker for Defendant and Respondent.

* * * * * *

Plaintiff and appellant Stephen P. Shoemaker, Jr. appeals from summary judgment granted in favor of his former attorney, defendant and respondent Marc A. Bronstein, A Professional Corporation. Appellant sued respondent for breach of fiduciary duty arising from respondent's representation of appellant in an underlying real estate transactional matter. The trial court granted summary judgment on the ground that appellant's claim was barred by the one-year statute of limitations in Code of Civil Procedure section 340.6 (section 340.6). Appellant contends on appeal that his claim was timely because he did not discover the facts of wrongdoing until a year within commencing his action and that he did not suffer actual injury until shortly before he filed his lawsuit. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Undisputed Facts

All of the following facts are taken from the "undisputed" material facts in the separate statement of facts: Appellant is the trustee of the Stephen P. Shoemaker Trust dated October 6, 1992 (trust), which owned several parcels of property in Redondo Beach, California. On August 29, 2000, Trammel Crow Residential (TCR) submitted to appellant a letter of intent to purchase 42,000 square feet of land owned by the trust, and represented that it planned to develop the land into luxury residential apartments. Appellant considered the offer to be "very, very attractive" because it would increase the value of the trust's surrounding property. Respondent was appellant's long-time legal counsel on transactional matters and Don Jung was appellant's long-time accountant. Appellant sought Jung's advice on the deal.

In September 2000, TCR sent appellant a revised letter of intent, which included a closing date between "18 and 30 months after the mutual execution of a purchase and sale agreement" and a provision that after 18 months the purchase price would rise by one percent each month, compounded. After appellant executed the revised letter of intent, respondent advised appellant regarding the terms of the proposed purchase and

sale agreement. On October 12, 2000, TCR and appellant, as trustee of the trust, executed a purchase and sale agreement (agreement).

In April 2002, TCR and appellant executed a first amendment to the agreement, which modified the closing date by increasing it from 30 to 54 months. Prior to executing the first amendment, appellant sought respondent's advice. Respondent expressed concern that the extended closing date would "tie up" the trust and that appellant would be better served by obtaining an escape clause. Appellant believed that the price escalation clause adequately addressed respondent's concern.

In May 2003, TCR and appellant executed a second amendment to the agreement, which provided that if TCR selected a closing date between July 1 and December 31, 2003 (the early purchase period), TCR could purchase the property at an approximate $500,000 discount from the original purchase price. Although the agreement required the parties to provide respondent with copies of all written communications regarding the deal, respondent was never given the opportunity to review the second amendment prior to its execution.

The agreement obligated TCR to give 30 days written notice to both appellant and respondent of any intent to close the sale within the early purchase period. In breach of this notice provision, TCR telephoned appellant on November 25, 2003, stating that it intended to close the sale of the property the next day.[1] Shortly thereafter, appellant learned for the first time that TCR did not intend to develop the property into luxury residential apartments, but rather to sell the property to a third party.

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[1] Respondent asked the trial court to take judicial notice of appellant's complaint against TCR, which alleged that TCR closed the sale of the property by December 31, 2003 at a purchase price that was $490,000 less than the purchase price set forth in the original agreement.

On February 11, 2004, appellant wrote to respondent's successor, defendant Shumaker, Steckbauer and Weinhart, LLP (Steckbauer)[2]: "I can tell you that no one explained the [second] amendment to me or gave me a hint of how much money was involved. . . . When [respondent] found out and did nothing I suggested that it was almost malpractice. [Respondent] wrote a letter so that he could continue representing me at our first meeting. I was not a happy camper. [¶] . . . . This was not a very high priority compared with the trial for child pornography.[3] [¶] . . . [¶] When [respondent] found out after the Vegas house purchase, and did nothing, he was in great error. But, he is a tax attorney and I didn't realize to what extent [TCR] would go to protect [its] bottom line."

In March 2004, appellant, as trustee for the trust, filed a complaint against TCR for breach of contract and declaratory relief, alleging that TCR had breached the second amendment to the agreement by failing to give written notice to appellant and respondent.

Appellant sought the advice of his current attorney, T. Stanford Erickson, as to whether he had claims against respondent. On January 6, 2005, Erickson opined in an e-mail to appellant and Steckbauer: "I have completed an initial review of the case. . . . [Appellant] may have some potential future claims against [respondent]. The time period for commencing legal action on these potential future claims should be tolled by CCP 340.6(a)(1) and (2). [Appellant's] claims against [respondent] should be reevaluated after the court's ruling on the parties' motions for summary judgment scheduled for a hearing date on Feb. 4, 2005. At this time, [appellant] would not benefit

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[2] Although not clear from the separate statement of undisputed facts, appellant's verified operative complaint in the instant action alleges that after appellant and TCR began having disputes over the sale of the property, appellant, at respondent's recommendation, retained Steckbauer, with whom respondent was "of counsel," to represent him in mediation and litigation with TCR.

[3] According to respondent, appellant was charged with, and ultimately convicted of, child pornography crimes and is now a registered sex offender.

by asserting any existing claims that might be currently perfected against [respondent] for actions arising out of the allegations or issues involved in the lawsuit."

Four days later, on January 10, 2005, respondent withdrew from representing appellant. Within a week of respondent's resignation, on or about January 14, 2005, appellant retained attorney Paul Fine and defendant Daniels, Fine, Israel, Schonbuch & Lebovits LLP (DFISL) to "review the status of the litigation against [TCR] and . . . [respondent's] representation of my interests in this transaction."

In February 2005, appellant entered into a settlement agreement with TCR "for a substantial loss."

On October 27, 2005, appellant admitted in a communication to DFISL that he was concerned that the statute of limitations was running as to respondent: "This has been going on too long and I fear that there may be a statute running that would prevent me from pursuing Steckbauer & [respondent]. . . . My position, you know, is that [respondent] had a conflict along with Jung. [Respondent] knew that the reason for Crow's great deal was Crow presented a beautiful plan and was a great developer. . . . [Respondent] messed up a deal by not specifying Crow as the 'must develop the property' [*sic*] allowing Crow to flip the property. [Respondent] is and was of council [*sic*] for Steckbauer and they knew my feelings."

Procedural History

On February 13, 2007, appellant filed a verified complaint against respondent, Steckbauer and DFISL, alleging several causes of action against respondent. On April 20, 2007, appellant filed a verified first amended complaint (FAC), alleging a single cause of action against respondent for breach of fiduciary duty.

The verified FAC alleged the following: Respondent did not disclose any potential claims appellant may have had against him or against Steckbauer. Nor did respondent inform appellant of respondent's "own potential liability and conflict related to his failure to take immediate action to protect [appellant's] rights as soon as he had become aware of defects related to the substance and lack of proper procedure related to

the execution of the Second Amendment." In October 2004, a TCR representative told appellant that his underlying case had been undermined by respondent's actions and that appellant "could sue [respondent] for malpractice." On November 5, 2004, appellant raised at his deposition the issue of potential claims against respondent, and on November 8, 2004 Steckbauer advised appellant to obtain independent counsel to review potential claims against respondent. In February 2005, a month after appellant's current attorney had advised him that he may have potential claims against respondent, appellant retained DFISL to investigate any claims he might have against respondent and Steckbauer. On May 16, 2005, DFISL informed him that Steckbauer, with respondent's assistance, had billed appellant $46,027.52 on the underlying matter, and that "the majority of these fees and costs appear to have been unnecessary." Respondent's conflict in working with Steckbauer damaged appellant because neither informed him that the underlying case was a "loser," and they performed unnecessary legal work, which resulted in needless legal costs "in excess of $170,000" to appellant. On February 13, 2006, DFISL returned appellant's $10,000 retainer without comment and without making any attempt to advise him as to potential claims against respondent.

Steckbauer and respondent filed separate motions for summary judgment, that were set to be heard together on January 31, 2008.[4] Both motions argued that appellant's claims were barred by the one-year limitations period of section 340.6. Appellant filed a single opposition to the motions for summary judgment, largely focusing on Steckbauer's motion. Appellant conceded in his opposition that some of his claims "may be barred by limitations statutes based on findings of fact and law pertaining to [appellant's] claims against [respondent] and Steckbauer." With respect to the statute of limitations against respondent, appellant made the single argument that the four-year "catchall" limitations period in Code of Civil Procedure section 343 applied, rather than the one-year limitations period of section 340.6.

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[4] DFISL also filed a motion for summary judgment, but it is not clear from the record what happened with this motion, and DFISL is not a party to this appeal.

Appellant's declaration in support of his joint opposition reiterated the above undisputed facts and the allegations of his verified FAC. The declaration also stated that after appellant retained DFISL, he had a meeting on March 16, 2005 with two of the firm's partners who advised him that he had no viable action for malpractice against respondent or Steckbauer. After DFISL returned appellant's retainer fee on February 10, 2006, appellant learned that this advice was wrong. In June/July 2006, modified development plans for a 22-unit project were approved for the property originally purchased by TCR that did not include any plans for the purchase or development of the trust's adjacent property. According to appellant, the development options for the adjacent property are now limited and the value of the adjacent property has been reduced accordingly. After the FAC was filed, in September 2007, appellant learned for the first time that respondent had formed the opinion in May 2003, several months before TCR exercised its early purchase option, that the option agreement was invalid because a draft had not been sent to him prior to its execution, but he never informed appellant of this opinion.

The trial court granted respondent's motion for summary judgment, finding that the one-year statute of limitations in section 340.6 applied and that "[t]he evidence is undisputed that the statute of limitations against [respondent] was triggered by mid-January 2005 and [appellant] did not file this action until February 2007." Judgment was entered in favor of respondent.[5] This appeal followed.

DISCUSSION

I. Standard of Review.

We review a summary judgment motion de novo to determine whether there is a triable issue as to any material fact and whether the moving party is entitled to judgment as a matter of law. (*Galanty v. Paul Revere Life Ins. Co*. (2000) 23 Cal.4th 368, 374;

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[5] Steckbauer also obtained summary judgment in its favor. We granted Steckbauer's motion to dismiss the appeal as to Steckbauer on the ground that the notice of appeal was untimely as to Steckbauer.

Code Civ. Proc., § 437c, subd. (c).) To be entitled to judgment as a matter of law, the moving party must show by admissible evidence that the "action has no merit or that there is no defense" thereto. (Code Civ. Proc., § 437c, subd. (a).) A defendant moving for summary judgment meets this burden by presenting evidence demonstrating that one or more elements of the cause of action cannot be established or that there is a complete defense to the action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849–850, 853–854.) Once the defendant makes this showing, the burden shifts to the plaintiff to show that a triable issue of material fact exists as to that cause of action or defense. (Code Civ. Proc., § 437c, subd. (p)(2); see *Aguilar, supra*, at p. 850.) A plaintiff cannot rely upon the mere allegations or denials of its pleadings, but "shall set forth the specific facts" based on admissible evidence showing a triable issue exists. (Code Civ. Proc., § 437c, subd. (p)(2); *Borders Online v. State Bd. of Equalization* (2005) 129 Cal.App.4th 1179, 1188.)

Where, as here, a defendant moves for summary judgment on the basis that the action was barred by the one-year limitations period of section 340.6, that defendant "has the burden of proving, under the 'traditional allocation of the burden of proof' [citation], that plaintiff discovered or should have discovered the facts alleged to constitute defendant's wrongdoing more than one year prior to filing this action." (*Samuels v. Mix* (1999) 22 Cal.4th 1, 8–9.) "[I]n legal malpractice actions statute of limitations issues, including injury, are at base factual inquiries." (*Adams v. Paul* (1995) 11 Cal.4th 583, 588.) However, "[w]hen the material facts are undisputed, the trial court can resolve the question as a matter of law according to the principles governing summary judgment." (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 764 (*Jordache*).)

II. Section 340.6 is the Applicable Limitations Period.

As an initial matter, we conclude that the trial court correctly determined that the one-year statute of limitations in section 340.6 applied to appellant's claim against respondent for breach of fiduciary duty. Although it is not entirely clear from appellant's

opening brief, he appears to be arguing that the four-year "catchall" statute of limitations in Code of Civil Procedure section 343 applies to his claim.[6] While appellant took this position in his written opposition to respondent's motion for summary judgment, his attorney seemed to concede at the hearing on the motion that section 340.6 applied. In any event, section 340.6 is the applicable section.

Section 340.6, subdivision (a) provides in pertinent part: "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. In no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that any of the following exist: [¶] (1) The plaintiff has not sustained actual injury; [¶] (2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred . . . ."

In his verified FAC, appellant alleged that respondent was a licensed attorney who represented him from 2000 through 2003 in drafting and negotiating a real estate transaction involving the sale of real property to TRC; from December 2003 through November 2004, respondent assisted Steckbauer in representing appellant in mediation and litigation pertaining to the property and agreements drafted and negotiated by respondent; respondent failed to disclose to appellant potential claims appellant might have against respondent or conflicts of interest respondent had with appellant or Steckbauer in connection with their representation of him in the underlying case; and appellant's underlying case was "prejudiced" and he "was wrongfully billed" as a result of respondent's and Steckbauer's breaches of their fiduciary duties.

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6 Code of Civil Procedure section 343 provides: "An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued."

Clearly, the breaches of duty alleged by respondent arose from the attorney-client relationship between appellant and respondent. Claims for breach of fiduciary duty arising solely from the attorney-client relationship are governed by the one-year statute of limitations on claims for legal malpractice in section 340.6. (*Quintilliani v. Mannerino* (1998) 62 Cal.App.4th 54, 68 ["Since most claims for breach of fiduciary obligations can be restated as a claim for attorney malpractice, and since the fiduciary obligations here arose out of the attorney-client relationship, we find that section 340.6 applies to such claims"]; *Levin v. Graham & James* (1995) 37 Cal.App.4th 798, 805 [for any wrongful act or omission of an attorney, other than actual fraud, arising from the performance of professional services, whether the theory is based on contract, tort or breach of fiduciary duty, the one-year statutory period applies]; *Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1369 [same] (*Stoll*).)

Appellant relies on *David Welch Co. v. Erskine & Tulley* (1988) 203 Cal.App.3d 884, 893 to support his claim that a four-year statutory period under Code of Civil Procedure section 343 applies. But that case is inapposite because the client was not suing the attorney for acts that arose from their attorney-client relationship, but for acts outside of that relationship. Moreover, subsequent cases have criticized *Welch*. In *Stoll, supra*, 9 Cal.App.4th 1362, the court "respectfully disagree[d]" with *Welch* because it did not cite any authority involving a breach of fiduciary duty in the context of legal malpractice and did not discuss the legislative history of section 340.6. (*Stoll, supra,* at p. 1369.) The *Stoll* court noted that "[t]he limitation of one year was designed to counteract the potential of lengthy periods of potential liability wrought by the adoption of the discovery rule, and thereby reduce the costs of malpractice insurance." (*Id.* at p. 1368.) Similarly, the court in *Quintilliani v. Mannerino, supra*, 62 Cal.App.4th 54, stated: "[W]e agree that *Welch* should not be followed, since it did not cite any authority dealing with a breach of fiduciary duty in the context of attorney malpractice." (*Id.* at p. 68.) See also *Pompilio v. Kosmo, Cho & Brown* (1995) 39 Cal.App.4th 1324, 1329: "It is true that the Pompilios have alleged a cause of action entitled 'Breach of Fiduciary Duty.' Nevertheless, the allegations of this cause of action concern Skavdahl's acts and

omissions while representing the Pompilios and sounds in legal malpractice. The authority upon which the Pompilios rely, *David Welch Co. v. Erskine & Tulley*, *supra*, 203 Cal.App.3d 884, 893, applied a four-year limitations period to the plaintiff's action against its attorneys for usurping plaintiff's business after the attorney-client relationship ended. It is not pertinent here." We are satisfied that the express language of section 340.6 and the more recent case law make clear that the one-year limitations period of section 340.6 applies to appellant's claim against respondent for breach of fiduciary duty arising out of the attorney-client relationship.

III. Appellant Was Aware of the Facts Giving Rise to His Claim Against Respondent More than One Year Before He Filed His Lawsuit.

Section 340.6, subdivision (a) provides that the limitations period against an attorney commences "within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first." (See *Laird v. Blacker* (1992) 2 Cal.4th 606, 611; *Radovich v. Locke-Paddon* (1995) 35 Cal.App.4th 946, 966, 970; *Worton v. Worton* (1991) 234 Cal.App.3d 1638, 1650.)

The FAC alleged that respondent did not disclose any potential claims appellant may have had against him or against Steckbauer, and that respondent did not inform appellant of respondent's "own potential liability and conflict related to his failure to take immediate action to protect [appellant's] rights as soon as he had become aware of defects related to the substance and lack of proper procedure related to the execution of the Second Amendment." Based on the undisputed evidence, appellant was aware of the facts giving rise to these allegations more than one year before he filed his lawsuit against respondent.

The undisputed evidence showed that on February 11, 2004, appellant wrote to Steckbauer saying that no one had explained the second amendment to him and that when respondent "found out and did nothing I suggested that it was almost malpractice. . . .

[¶] . . . [¶] When [respondent] found out . . . and did nothing, he was in great error." In October 2004, a representative of TCR told appellant that respondent had undermined his case and that appellant "could sue [respondent] for malpractice." On November 5, 2004, appellant raised at his deposition the issue of potential claims against respondent. On November 8, 2004, Steckbauer advised appellant to obtain independent counsel to review potential claims against respondent. Appellant sought the advice of his current attorney, who opined in an e-mail to appellant on January 6, 2005 that appellant "may have some potential future claims against [respondent]." On or about January 14, 2005, appellant retained DFISL to investigate his claims against respondent. According to the FAC, DFISL's failure to act "caused [appellant] prejudice and may have unnecessarily barred [appellant] from seeking all of the remedies to which he would be legally entitled to pursue against Steckbauer and [respondent]."

Appellant concedes in his opening brief that he had expressed concern about respondent's "representation throughout the course of the underlying action" and that he "requested his attorneys to investigate his suspicions to determine whether the facts justified filing a claim." He attempts to undermine the impact of the undisputed evidence by asserting that he acted as a reasonably prudent person in not filing his lawsuit sooner because his attorneys did not advise him of any malpractice. But California courts have rejected attempts by litigants to argue that, although they were aware of certain facts, they did not know they had a cause of action for malpractice until so advised by an attorney. See *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, where the court stated, "it is the knowledge of facts rather than discovery of legal theory, that is the test" (*id*. at p. 803), and that any other position "would be to nullify the statutes of limitations" (*id*. at p. 804). In *Worton v. Worton, supra*, 234 Cal.App.3d 1638, 1650, the court stated: "Under Code of Civil Procedure section 340.6, however, the one-year period is triggered by the client's discovery of 'the facts constituting the wrongful act or omission,' not by his discovery that such facts constitute professional negligence, i.e., by discovery that a particular legal theory is applicable based on the known facts. 'It is irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories underlying his cause of action. Thus, if

one has suffered appreciable harm and knows or suspects that professional blundering is its cause, *the fact that an attorney has not yet advised him does not postpone commencement of the limitations period*.'" (Italics added.)

Thus, the undisputed evidence establishes that appellant was aware of the facts giving rise to his cause of action against respondent more than one year prior to commencing this lawsuit on February 13, 2007. Unless there is a basis for tolling the action, it is time-barred.

IV. Appellant Suffered Actual Injury More than One Year Prior to Filing His Lawsuit.

Section 340.6, subdivision (a)(1) provides that the limitations period shall be tolled during the time the plaintiff "has not sustained actual injury." "The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence." (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200.) "Actual injury occurs when the client suffers any loss or injury legally cognizable as damages in a legal malpractice action based on the asserted errors or omissions." (*Jordache, supra,* 18 Cal.4th at p. 743.) Actual injury may occur without any prior adjudication, judgment or settlement. (*Ibid*.) "The loss or diminution of a right or remedy constitutes injury or damage. [Citation.] Neither uncertainty of amount nor difficulty of proof renders that injury speculative or inchoate." (*Id*. at p. 744.) It is the fact, not the amount of, damages that triggers the limitations period. (*Laird v. Blacker, supra,* 2 Cal.4th at pp. 613–615.)

Appellant first complained to Steckbauer on February 11, 2004 that respondent had erred in not taking steps to challenge the validity of the second amendment once he became aware of it. By this point, appellant had sustained actual injury in late 2003 by selling the property to TCR at an approximate discount of $490,000. By the end of 2003, appellant had also learned that TCR did not intend to develop the property into luxury apartments and purchase the surrounding properties owned by appellant's trust, which was undisputably appellant's motivation for selling the property to TCR in the

first place. Appellant learned that TCR instead intended to "flip" the property, which would decrease the value of surrounding properties. After appellant retained DFISL to investigate his claims against respondent, he stated in a letter to the firm dated October 27, 2005 that respondent had "messed up" the deal by not specifying in the agreement that only TCR could develop the property and that it could not flip the property. After DFISL advised appellant to settle the underlying lawsuit because it was a "loser," appellant admitted that he settled the litigation in February 2005 "for a substantial loss." Appellant suffered all of these injuries more than a year before he filed his lawsuit against respondent.

Furthermore, it is well established that a client suffers actual injury when he incurs or pays attorneys' fees and legal costs and expenditures because of an attorney's error. (*Budd v. Nixen, supra,* 6 Cal.3d at pp. 201–202; *Jordache, supra,* 18 Cal.4th at pp. 761–762; *Southland Mechanical Constructors Corp. v. Nixen* (1981) 119 Cal.App.3d 417, 432.) Here, it is undisputed that on January 14, 2005, appellant retained DFISL to evaluate his claims against respondent and paid the firm a $10,000 retainer. The fact that the firm later returned the retainer to appellant is of no consequence. "An existing injury is not contingent or speculative simply because future events may affect its permanency or the amount of monetary damages eventually incurred. [Citations.] Thus, we must distinguish between an actual, existing injury that might be *remedied or reduced* in the future, and a speculative or contingent injury that might or might not *arise* in the future." (*Jordache, supra*, at p. 754.) "[W]hen malpractice results in the loss of a right, remedy, or interest, or in the imposition of a liability, there has been actual injury regardless of whether future events may affect the permanency of the injury or the amount of monetary damages eventually incurred." (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 227.)

Appellant also alleged in his verified FAC that before returning its retainer to him, DFISL informed appellant on May 16, 2005 that Steckbauer, with respondent's assistance, had billed appellant $46,027.52 on the underlying matter, and that "the majority of these fees and costs appear to have been unnecessary." Appellant also

alleged that he was damaged by respondent's conflict in working with Steckbauer because they failed to inform him that the underlying case was a "loser" and performed unnecessary legal work, which resulted in needless legal costs "in excess of $170,000" to appellant.

Appellant argues that he did not suffer "actual injury" until June/July 2006, when "the project adjacent to his property was approved and built, as prior to actual approval and construction, the property could have been developed according to the plans presented and approved by [appellant]." But this is just one more injury suffered by appellant. "The cause of action arises, however, before the client sustains all, or even the greater part, of the damages occasioned by his attorney's negligence. [Citations.] . . . . [¶] Indeed, once having discovered his attorney's negligence and having suffered some damage, the client must institute his action within the time prescribed in the statute of limitations or he will be barred from thereafter complaining of his attorney's conduct." (*Budd v. Nixen, supra,* 6 Cal.3d at p. 201.)

Given that appellant began sustaining actual injuries as a result of respondent's alleged errors and omissions more than one year before filing suit against respondent, the trial court properly granted summary judgment in favor of respondent on the ground that appellant's action against him was time-barred.

DISPOSITION

The summary judgment is affirmed. Respondent is entitled to recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST